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EXAMINER

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ART UNIT PAPER NUMBER

2137

DATE MAILED: 04/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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DETAILED ACTION

1. Claims 1-24 are pending.
2. Amendment filed 04/03/2006 has been received and considered.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. The term "approximately" in claims 1, 6, and 11 and "approximate" in claims 17, 20, and 23 are a relative terms which renders the claim indefinite. The terms "approximately" and "approximate" are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.
6. Any claims not specifically addressed are rejected by virtue of their dependencies.

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Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pezzillo et al (US 6434621), in view of Teare et al (US 5243652).

As per claims 1, 6 and 11, Pezzillo et al discloses encoding a radio broadcast into digital packets of information; transmitting said digital packets of information over the Internet (see column 5 lines 60-67).

Pezzillo et al fails to disclose encrypting the packets to restrict access to a defined distribution area and broadcasting the decryption key to the defined area.

However, Teare et al teaches encrypting data and restricting access to said data to a defined distribution area and broadcasting a key (see figure 1 and column 2 lines 11-63).

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At the time of the invention it would have been obvious to a person of ordinary skill in the art to use Teare et al's method of restriction access to a specific location using encryption in Pezzillo et al's Internet radio broadcasting system.

Motivation to do so would have been to provide location-sensitive control over remote or mobile systems in a secure manner, without requiring secure facilities for the remote or mobile node (see column 1 lines 34-37).

As per claims 2, 7, and 12, the modified Pezzillo et al and Teare et al system discloses receiving said decryption key by one or more users of computer systems located approximately within said defined distribution area of said broadcaster (see Teare et al column 2 lines 11-63).

As per claims 3, 8, and 13, the modified Pezzillo et al and Teare et al system discloses decrypting said encrypted digital packets of information using said decryption key (see Teare column 2 lines 36-49).

As per claims 4, 9, and 14, the modified Pezzillo et al and Teare et al system fails to disclose reproducing said decrypted digital broadcast by an audio transducer. However, Official Notice is taken that at the time of the invention it would have been obvious to a person of ordinary skill in the art to use an

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audio transducer to reproduce the digital broadcast. Motivation to do so would have been to allow the receiver to hear the digital broadcast.

As per claims 5, 10, and 15, the modified Pezzillo et al and Teare et al system discloses the key is broadcast using electromagnetic waves (see Teare et al column 2 lines 11-63).

9. Claims 17-18, 20-21 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franken et al as applied to claims 16, 19 and 22 above, and further in view of Schlossberg et al (US 20020066034).

As per claims 17-18, 20-21 and 23-24, Franken et al discloses transmitting a broadcast over the Internet within a defined distribution area, comprising the steps of: receiving a request to transmit said broadcast from a requester; determining an approximate physical location of said requester (see paragraph 19 lines 1-12); and transmitting said broadcast over the Internet to said requester if said requester is physically located approximately within said defined distribution area (see paragraph 19 last 7 lines); and not transmitting the broadcast is not located in the location (see paragraph 17).

Franken et al fails to disclose the step of determining said approximate physical location of said requester comprises the steps of: capturing an Internet Protocol of said requester;

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converting said captured Internet Protocol of said requester into a computer name; and performing a trace of said request.

However, Schlossberg et al teaches these limitations (see paragraph 54).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to use Schlossberg et al's method of tracing to determine the location in the Franken et al system.

Motivation to do so would have been to determine the physical location of a device on the Internet (see paragraph 54).

Response to Arguments

10. Applicant's arguments filed 04/03/2006 have been fully considered but they are not persuasive. Applicant argues: "approximately" is not indefinite; the modified Pezzillo and Teare system fails to disclose: "transmitting said encrypted digital packets of information over the Internet", "encrypting said digital packets of information", "providing a decryption key", "receiving said decryption key", "decrypting said encrypted digital packets", and "transmitted via electromagnetic waves"; to show support for the Official Notice taken; the references are non-analogous art; there is insufficient

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motivation; there is no motivation for the limitations in the dependent claims.

With respect to Applicant's argument that "approximately" is not indefinite, one of ordinary skill in the art would not know what this term means; even based on the dictionary definition provided by Applicant. One of ordinary skill in the art would not have know what this term clearly defines because "approximate" or "to come near" does not clarify how close this term defines. Since there is no description in Applicant's specification how close to the defined region approximate defines, one could conceive it being one inch or one block or one mile or one hundred miles since electromagnetic waves can travel to these ranges. Therefore the term "approximate" or "approximately" in the claims is indefinite. Applicant also noted that a number of patents used the term "approximately" or "approximate" in the claims, these patents have no relevance to the present application. Furthermore it is unknown whether these patents clearly define "approximately" or "approximate" in their specifications.

With respect to Applicant's argument that the modified Pezzillo and Teare system fails to disclose "transmitting said encrypted digital packets of information over the Internet", Pezzillo teaches transmitting digital packets of information

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over the Internet (see column 5 lines 60-67), while Teare teaches transferring encrypted signals in column 2 as admitted by Applicant on page 13, therefore from the combination shown above it would have been obvious to one skilled in the art to transmit the encrypted signals of Teare over the Internet as taught by Pezzillo. So the combination of Pezzillo and Teare discloses "transmitting said encrypted digital packets of information over the Internet".

With respect to Applicant's argument that the modified Pezzillo and Teare system fails to disclose "encrypting said digital packets of information", as described above the modified Pezzillo and Teare system discloses transmitting encrypted information and in order for the system to transmit encrypted information, there inherently has to be a step of encrypting the content at some point in time.

With respect to Applicant's argument that the modified Pezzillo and Teare system fails to disclose "providing a decryption key to a transmitter to be broadcast within said defined distribution area of said broadcaster", as seen in figure 1 the central facility 12 has a storage of decryption keys which are provided to a transmitter which broadcasts them over the air to the remote node 11. This remote node has to be within a specific geographic location (see column 2 lines 36-

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49). Therefore that the modified Pezzillo and Teare system discloses "providing a decryption key to a transmitter to be broadcast within said defined distribution area of said broadcaster".

With respect to Applicant's argument that the modified Pezzillo and Teare system fails to disclose "receiving said decryption key by one or more users of computer systems located approximately within said defined distribution area of said broadcaster" and "decrypting said encrypted digital packets of information using said decryption key", as stated above the modified Pezzillo and Teare system discloses transmitting of encrypted information packets and provided a decryption key to a transmitter. Furthermore, Teare discloses "transmission of a code decryption key from the central facility 12 to remote node 11, where the encrypted signal would be decoded with the key." Based on this passage, Teare clearly discloses decrypting the information. In order for the remote node of Teare to decrypt the information using the key sent by the central facility the remote node inherently receives the key.

With respect to Applicant's argument that the modified Pezzillo and Teare system fails to disclose, "wherein said decryption key is transmitted via electromagnetic waves", the central facility of Teare teaches transmitting the decryption

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key as described above. This transmission is done by radio signals (see figure 1, column 2 lines 36-63 and column 3 lines 4-18), and as defined by Merriam-Webster (see <http://m-w.com/dictionary/electromagnetic%20wave>) and electromagnetic wave is "one of the waves that are propagated by simultaneous periodic variations of electric and magnetic field intensity and that include radio waves, infrared, visible light, ultraviolet, X rays, and gamma rays". Therefore a radio wave is an electromagnetic wave.

With respect to Applicant's traversal of the Official Notice taken, the FOLDOC reference, provided with an the action dated 10/03/2005, states that a transducer is "A device for converting sound, temperature, pressure, light or other signals to or from an electronic signal." Therefore an audio transducer would convert electronic signals to sound.

With respect to Applicant's argument that Teare is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Applicant states, on page 17, that the present invention

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addresses the problem of enabling broadcasters to transmit information over the Internet to a smaller distribution base of listeners. Pezzillo solves the problem of transmitting information over the Internet, while Teare solves the problem of providing information to a small distribution base. Therefore both Pezzillo and Teare relate to the problem to be solved and are analogous art.

With respect to Applicant's argument that there is insufficient motivation to combine the references, Pezzillo teaches broadcasting information (audio) over the Internet (a broadcast technology) and Teare provides a system to allow the use of content only when in a defined area. Teare also states the motivation to use such broadcast content restriction system to provide location-sensitive control over remote or mobile systems in a secure manner, without requiring secure facilities for the remote or mobile node (see column 1 lines 34-37). Therefore one would be motivated to use the broadcast content restriction method in the Internet radio broadcast of Pezzillo. Applicant further states that, "The Examiner must provide objective evidence in modifying Franken to include the above-cited missing limitation of claims 1, 6 and 11. In re Lee, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Instead, the Examiner is merely relying upon his own subjective opinion which is

insufficient to support a prima facie case of obviousness in rejecting claims 1-15. Id. Consequently, the Examiner's motivation is insufficient to support a prima facie case of obviousness for rejecting claims 1-15." With respect to these statements, Franken is not relied upon for a rejection of claims 1, 6 and 11. Furthermore, each statement of motivation is taken from and cited as being from one of the references. Applicant argues why there is insufficient motivation to combine Schlossberg with Franken, these arguments are discussed below.

With respect to Applicant's argument that there is no motivation for the limitations in the dependent claims this motivation is the same as in the claims from which they depend. Once the references have been combined they have been considered to be a new system with the combined teachings of both references.

With respect to Applicant's argument that there is insufficient motivation to combine Schlossberg with Franken teaches a method of determining the location of a computer on a network and Franken relies upon a geographic location to perform it's function. Therefore, one of ordinary skill in the art would have been motivated to detect an IP address in the Franken system to determine the physical location of a device on the Internet (see Schlossberg paragraph 54). Applicant further

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states that, "The Examiner must provide objective evidence in modifying Franken to include the above-cited missing limitation of claims 17, 20 and 23. In re Lee, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Instead, the Examiner is merely relying upon his own subjective opinion which is insufficient to support a prima facie case of obviousness in rejecting claims 17-18, 20-21 and 23-24. Id. Consequently, the Examiner's motivation is insufficient to support a prima facie case of obviousness for rejecting claims 17-18, 20-21 and 23-24." With respect to these statements, each statement of motivation is taken from and cited as being from one of the references.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated

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from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Pyzocha whose telephone number is (571) 272-3875. The examiner can normally be reached on 7:00am - 4:30pm first Fridays of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Emmanuel Moise can be reached on (571) 272-3865. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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